



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

August 12, 2003

Mr. Francisco J. Martinez  
Assistant County and District Attorney  
Cameron County District Attorney's Office  
974 East Harrison Street  
Brownsville, Texas 78520

OR2003-5598

Dear Mr. Martinez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185829.

The Cameron County District Attorney (the "district attorney") received a request for 14 categories of information relating an accident and two named individuals who were involved. You state that the district attorney has released some of the requested information. You claim, however, that other types of responsive information are excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.<sup>1</sup> We assume that the district attorney has released any other types of information that are responsive to this request, to the extent that the district attorney held or had access to such information on the date of her receipt of this request. If not, then the district attorney must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). We note that chapter 552 of the Government Code does not require the district attorney to release information that did not exist when she received this request, create responsive information, or obtain information that is not held by the district attorney or on her behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

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<sup>1</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district attorney to withhold any information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that other statutes make confidential. You state that the information submitted as Exhibit C is a representative sample of TCIC-NCIC reports. Criminal history record information (“CHRI”) generated by the National Crime Information Center (the “NCIC”) or the Texas Crime Information Center (the “TCIC”) is confidential under federal and state law. Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself”); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI maintained by the Texas Department of Public Safety (“DPS”), except that the DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083.<sup>2</sup> Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI from DPS. A criminal justice agency that is authorized to obtain CHRI from DPS also may obtain CHRI that is maintained by another criminal justice agency from that criminal justice agency. *Id.* § 411.087(a)(2). However, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations, and any CHRI obtained from DPS or another criminal justice agency is confidential under subchapter F of chapter 411 of the Government Code. We have marked CHRI in Exhibit C that the district attorney must withhold under section 552.101 of the Government Code.

We note that the remaining information in Exhibit C includes Texas driver’s license information. Section 552.130 of the Government Code excepts from public disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). We have marked Texas driver’s license information in Exhibit C that the district attorney must withhold under section 552.130.

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<sup>2</sup>Section 411.082(2) of the Government Code defines CHRI as being “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” We note, however, that the definition of CHRI does not encompass driving record information. *See id.* § 411.082(2)(B).

Next, we address the district attorney's claim under section 552.108 of the Government Code with regard to the information in Exhibits A and B. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that Exhibits A and B relate to a case that was no-billed by a grand jury. You also inform us, however, that the statute of limitations has not expired. You assert that the release of the information in Exhibit A would interfere with the prosecution of a crime. You state that the information in Exhibit B relates to an ongoing investigation. Based on your representations, we find that section 552.108(a)(1) is applicable to the information submitted as Exhibits A and B. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The district attorney must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The district attorney may withhold the remaining information in Exhibits A and B under section 552.108(a)(1).

In summary, the marked CHRI in Exhibit C is excepted from disclosure under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. The marked Texas driver's license information in Exhibit C is excepted from disclosure under section 552.130. The remaining information in Exhibit C is not excepted from disclosure and must be released. The district attorney may withhold the information in Exhibits A and B under section 552.108(a)(1), with the exception of the basic information that must be released under section 552.108(c). As we are able to make these determinations, we need not address your claim under section 552.103.<sup>3</sup>

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<sup>3</sup>We note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

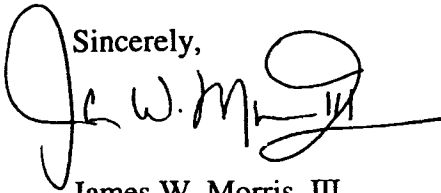
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "M" at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 185829

Enc: Submitted documents

c: Mr. Thomas A. Cowen  
Chaves, Gonzales & Hoblit  
700 North St. Mary's Street, Suite 1800  
San Antonio, Texas 78205  
(w/o enclosures)